A Descriptive Study of

Incompetent to Stand Trial and Non-Restorable Defendants

in Pinal County Arizona

by

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ABSTRACT

This thesis examines the demographic, clinical, and criminal characteristics and discharge dispositions of pre-trial defendants deemed incompetent to stand trial and non-restorable (IST/NR) in Pinal County Arizona. Currently, there is limited research on defendants who are deemed IST/NR and even less so on discharge dispositions. The study utilized comparative descriptive analysis of secondary data collected by the Pinal County Attorney Offices on IST/NR defendants and restored defendants. It employed chi-square analyses to compare key variables between defendant groups. The study found few variations in clinical, legal, and criminal characteristics observed by previous studies and no statistical differences amongst IST/NR and restored defendants. However, it found the re-offense rate of IST/NR defendants in Pinal County was considerably lower than the general prison population. Moreover, it identified a narrow use of civil commitment procedures and guardianship amongst the IST/NR defendants who have a mental illness. Implications for further research and policy for Pinal County and Arizona are made.

DEDICATION

For my wife, Emily, on behalf of sacrificing time and energy to support me daily through my degree while being pregnant, giving birth, and co-parenting our beautiful daughter, Louisa.

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CHAPTER 1

Introduction

It is a well-documented phenomenon that persons with a mental illness are more likely to interact with the criminal justice system than the general public (Skeem, Manchak, & Peterson, 2011; as cited in Schreiber et. al 2015). The Bureau of Justice Statistics (2006) reported that 56 percent of state prisoners, 45 percent of federal prisoners, and 64 percent of jail inmates have a mental health issue. According to Torrey et. al (2010), there are more persons with mental health disorders in state and federal prisons than in psychiatric hospitals. Many of these inmates have a diagnosis of a personality disorder, mood disorder, and psychotic disorder (Bureau of Justice Statistics, 2006). Of these individuals, 6.5% have a severe enough mental illness they are deemed guilty but mentally ill, incompetent to stand trial, or are prisoners in a forensic psychiatric hospital (Quinsey, Haris, Rice, & Cormier, 2006; as cited in Schreiber et al., 2006). Many of these individuals with severe mental illness pose difficulties in criminal proceedings, especially in incompetency defenses.

The landmark U.S. Supreme Court decision *Dusky vs. United States* (1960) set the standard for the judicial competency processes. Under this decision, a defendant is competent to stand trial if he/she "has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and "has a rational as well as factual understanding of the proceedings against him" (p. 402). Approximately 60,000 competency evaluations are conducted on defendants every year in the United States (Bonnie & Grisso, 2000; as cited in Hubbard, Zapf, & Ronan, 2003). Consequently,

approximately 20% to 30% of these individuals are adjudicated incompetent to stand trial (IST) by the courts (Melton, Petrila, Poythress, & Slobogin, 1997; Warren, Fitch Dietz, & Rosenfeld, 1991). Defendants found IST make up the largest portion of forensic patients in mental health hospitals (Pendleto, 1980) and utilize one-ninth of all psychiatric beds in the United States (Mossman, 2007). Courts order all individuals deemed IST to restoration to competency (RTC) programs that take place in state hospitals, jails, prisons, or outpatient settings.

There is an abundance of research on the characteristics of pre-trial defendants who are deemed IST (Nicholson & Kulger, 1991; Pirelli, Gotdiner, & Zapf, 2011). IST outcomes correlate with important demographic indicators such as being male, unmarried, less educated, and unemployed (Hubbard, Zapf, & Ronan 2003; Nicholson & Kulger, 1991; Pirelli, Gotdiner, & Zapf, 2011). Also, IST defendants are usually diagnosed with long-standing psychiatric diagnosis, severe mood disorders, substance use disorders, organic brain disorders, or intellectual disability (Warren et. al. 1991). Legal factors such as property damage, nonviolent crimes, and prior interaction with the criminal justice system contribute to evaluators deeming defendants IST (Hubbard, Zapf, & Ronan 2003).

Until 1972, many IST defendants were held indefinitely in RTC programs without ever being convicted of a crime (Roesch, Zapf, Golding, & Skeem, 1999; as cited in Hubbard, Zapf, & Ronan 2003). The U.S. Supreme Court decision in *Jackson v. Indiana* (1972) ended this practice by declaring defendants "cannot be held more than the reasonable period of time necessary to determine whether there is a substantial

probability that he will attain that competency in the foreseeable future" (p. 738). However, the Supreme Court left it to the states to determine how "reasonable period of time" is defined. Many jurisdictions have strict time sensitive RTC statues, but many of them still hold individuals indefinitely depending on the charging crime (Parker, 2012; Miller, 2003).

Compared to IST research, RTC research is quite scant (Zapf & Roesch, 2011). Preliminary studies have shown that IST defendants who were deemed restored compared to nonrestorable (NR) showed very few differences (Rodenauser & Khamis 1988). However, Mossman (2007) and Colwell and Gianesini (2011) have found that there are two defining clinical characteristics in IST/NR defendants. First, IST/NR defendants tend to have cognitive disorders such as a severe intellectual disability or chronic neurodegenerative disease. Second, defendants tend to be diagnosed with long-standing psychotic disorders with a history of extended stays in psychiatric hospitals. Researchers also found that these individuals are usually male and above the age of 65 (Mossman, 2007; Colwell & Gianesini 2011). IST defendants who are charged with violent crimes and have previous criminal history were more often predicted to be restorable (Hubbard, Zapf & Ronan, 2003). Individuals accused of a misdemeanor crime or lower level charge were also more likely to be found IST/NR (Mossman, 2007; Colwell & Gianesini 2011; Warren et al. 2013). This research suggests that factors other than those related to mental health are often granted considerable weight in IST/NR decisions even though the restoration of competency is supposed to be premised on cognitive function (see *Dusky v. United States*, 1960; *Jackson v. Indiana*, 1972).

In Arizona, IST/NR defendants put the legal and clinical systems in a quagmire. Arizona statutes assert that persons deemed incompetent cannot be in an RTC program for longer than 21 months (ARIZ. REV. STAT. § 13-4515(A); see also Parker, 2012). If this time expires and examiners believe the defendant IST/NR, then the person is unable to participate in a criminal trial. This problem means the county attorney's office has limited options in what they can do with the IST/NR defendant. They can no longer incarcerate them because they cannot charge them with a crime, nor can they retain them in the RTC program. This situation forces most county attorney offices to remand the individual to title 36 civil commitment proceedings, appointing a guardian for the defendant, dismissing charges, or a combination of all three (see ARIZ. REV. STAT. § 13-4515(D); ARIZ. REV. STAT. §§ 14-5101–5704 & 14-12101–12503; ARIZ. REV. STAT. §§ 36-501–550).

However, Arizona legislators have speculated that these solutions for IST/NR defendants are not effective (K. Mayer, personal communication, October, 2016). Arizona legislators believe that many of these IST/NR defendants are recommitting crimes and being processed through rule 11 incompetency proceedings once again (Grado, 2016). To address this issue, lawmakers attempted to pass Arizona SB 1510 (2016), which allowed county attorney offices to follow the outcomes of civil commitment proceedings. The governor vetoed this bill due to concerns that it would impact the integrity of Arizona State Hospital (Grado, 2016).

The purpose of this study is to look at the demographic, legal history, and clinical characteristics of IST/NR defendants in Arizona. It will contribute to the growing

knowledge of IST/NR defendants and add more clarity to the topic. It will also explore the number of IST/NR defendants discharged from RTC programs, referred to civil commitment proceedings, guardianship, and re-offenses. Also, the study can offer substantive guidance to Arizona Legislators who are crafting new legislation to help these individuals.

CHAPTER 2

Background Literature

Judicial Procedures

Three judicial decisions set the parameters for IST/NR defendants in the Untied States. *Dusky v. United States* (1960) was the landmark Supreme Court decision that standardized and developed a legal definition of incompetency. *Jackson v. Indiana* (1972) ordered states that they cannot keep IST defendants indefinitely with in a RTC program. *Riggins v. Nevada* (1992) allowed individuals who are deemed competent to be medicated during a trial only if it did not interfere with their behavior or presentation during the trial.

Dusky v. United States. Before *Dusky v. United States* (1960), it was up to the discretion of the originating court to determine the definition of incompetency. This Supreme Court decision began with a defendant, Milton Dusky, who was charged with raping and kidnaping an underage female. Milton was also diagnosed with schizophrenia at the time of the court proceedings and was actively psychotic. Despite Dusky's unstable mental state, the court deemed him competent to stand trial and sentenced him to 45 years in a state prison. With the aid of his lawyers, Dusky petitioned the Supreme Court to overturn his case because they asserted he was IST. The Supreme Court agreed with his claim and reduced his sentence by 20 years (Thomas, 2010).

This decision led to the development of the "*Dusky* Standard" which defines incompetence not as a clinical measure, but as a legal standard. *Dusky* states defendants must have "sufficient present ability to consult with his lawyer with a reasonable degree

of rational understanding" and have "a rational as well as factual understanding of the proceedings against him" (p. 362). In other words, there are two parts to the *Dusky* standard, one being the defendant must be able to communicate with, understand, and cooperate with counsel; the second being that the defendant must be able to understand the criminal proceedings.

These are nebulous standards (see Schug & Fradella, 2014). Lower courts have attempted to operationalize *Dusky* by setting forth a list of factors to guide judges in competency decisions. For example, the highly influential federal district court case of *Wieter v. Settle* (1961) explained that a defendant would be competent to stand trial if the accused:

1. has the "mental capacity to appreciate his presence in relation to time, place, and things";
2. has "elementary mental processes . . . such that he apprehends (i.e., seizes and grasps with what mind he has) that he is in a Court of Justice, charged with a criminal offense";
3. understands "there is a Judge on the Bench";
4. understands there is "a prosecutor present who will try to convict him of a criminal charge";
5. understands "he has a lawyer (self-employed or Court-appointed) who will undertake to defend him against that charge";
6. understands "he will be expected to tell his lawyer the circumstances, to the best of his mental ability, (whether colored or not by mental aberration) the

facts surrounding him at the time and place where the law violation is alleged to have been committed";

7. understands "there is, or will be, a jury present to pass upon evidence adduced as to his guilt or innocence of such charge"; and

8. has "memory sufficient to relate those things in his own personal manner." (pp. 321–322, as cited in Schug & Fradella, 2014, pp. 436, 438).

Although these factors provide more guidance to judges making competency determinations, the use of the repeated use of word "understands" has been repeatedly criticized for failing to distinguish "factual understanding from rational understanding" (Schug & Fradella, 2014, p. 438). The latter involves decisional adjudicative competency—inquire into the *quality* of a defendant's understanding and reasoning processes (Bonnie, 1993; Felthous, 2011; Marcus, Poythress, Edens, & Lilienfeld, 2010; Otto, 2006; Schug & Fradella, 2014;

Jackson v. Indiana. Between the *Dusky* ruling in 1960 and 1972, IST defendants were sometimes indefinitely committed to treatment without ever being convicted of a crime (Roesch, Zapf, Golding, & Skeem, 1999). It was not until *Jackson v. Indiana* (1972) that this practice changed. Theon Jackson was a mentally disabled, mute and deaf 27-year-old male who was charged with stealing various items valued at a total of nine dollars (Mossman et al., 2007). Jackson was deemed IST, and the Indiana court committed him to a psychiatric hospital until he was deemed competent to stand trial. The Indiana attorney general thought this was equivalent to sentencing Jackson to life

without conviction of a crime. Jackson and his attorneys appealed the case to the Supreme Court.

The Court ruled that Jackson's treatment infringed on his Fourteenth Amendment rights to equal protection and due process (Mossman et al., 2007). In terms of the former, the Court explained that Jackson was initial confined under a more lenient standard and continually detained under a stricter standard for release than those who were civilly committed, creating an unconstitutional imbalance between two similarly-situated groups of people (Mossman et. al, 2007). Furthermore, Indiana courts violated Jackson's due process rights because states cannot hold a pre-trial defendant for reasons only associated to incompetency. Justice Blackmun asserted that incompetent defendants cannot be held "more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future'' (Jackson v. Indiana, 1972, p. 738). If the incompetent defendant is unable to be restored to competency in the "reasonable period of time" allotted, states must either dismiss the crime or start civil commitment procedures (Mossman et al., 2007; Schug & Fradella, 2015). Nevertheless, the court justices left it to the states to determine the definition of "reasonable time."

Parker (2012) conducted a policy analysis on all of the 50 state statuary limits in regards to RTC programs. He found that 31 states have some time limit for restoration. However, depending on the crime, 19 states still do not have set statutory limits for IST defendants in RTC treatment. Meaning that some defendants could be held indefinitely

despite the Jackson ruling. It is surprising that so many states still choose to circumvent the *Jackson* ruling despite it being around for more than 40 years (Miller, 2003).

Riggins v. Nevada. David Riggings was sentenced to death in 1989 for murder while medicated on antipsychotic medication during his trial. Riggins was so heavily medicated that one psychiatrist stated Riggins was "within the toxic range" and sufficient to "tranquilize an elephant" (as cited in Feeman, 1994, p.681). The State of Nevada argued despite the negative side effects of high dosages of antipsychotic medications, such forcible medication was necessary to ensure Riggins remained competent during his trial. Over an eight month period between his competency hearing and his trial, the State of Nevada doubled his dosage of medication. After his competency hearing, he pleaded that he was insane at the time he committed the murder. The jury was not convinced, found him guilty of murder, and sentenced him to death (Feeman, 1994).

After his trial, Riggins' lawyers appealed the lower court decision, claiming that forcibly administering medication during Riggins' criminal defense hindered his liberty, threatened his ability to participate in his criminal proceedings, and undermined his insanity plea because the jury was unable to see his true mental state. The Supreme Court agreed with Riggins and held that someone cannot be medicated to the point that it would "prejudice his reactions and presentation in the court room and render him unable or unwilling to assist his counsel" (*Nevada v. Riggins*, 1992, as cited in Fradella, 2005 p. 453). This decision effectively made it so that defendants can only be medicated to the point that it does not affect their behavior and demeanor in a trial in ways that might prejudice them. Therefore, if a defendant cannot be restored to competency and does not

meet the standards of *Riggins* ruling, the person must be civilly committed (Fradella, 2005).

Incompetency

The determination if the defendant meets the *Dusky* standard is ultimately a decision of the court. However, mental health professionals are utilized 77.9% of the time when determining competency (Pirelli, Gottdiener, & Zapf, 2011). Judges rarely contest determinations from behavioral health professionals (Zapf et al., 2002; Cruise & Rogers, 1998). Zapf and colleagues (2002) found that the judge will accept the determination of a clinician 99.6% of the time. This finding makes it vital for clinicians to establish appropriate ways of determining the competency of a defendant.

The American Academy of Psychiatry and Law ([AAPL], Mossman et al., 2007) issued guidelines that clinicians should use in competency evaluations. First, a clinical assessment should evaluate current mental status, functional abilities, and psycholegal abilities of pre-trial defendants. Mossman and colleagues (2007) suggest that clinicians use competency-relevant instruments in determining these factors. Since the 1960s, there has been 12 psychological assessment instruments that test the psycholegal abilities of pre-trial defendants (Barnard et al., 1991; Colwell et al., 2008; Everington & Luckasson, 1992; Golding, 1993; Laboratory of Community Psychiatry, 1973; Lipsitt et al., 1971; Mosley, Thyer, & Larrison, 2001; Nicholson, Briggs, & Robertson, 1988; Nussbaum, Mamak, Tremblay, Wright, & Callaghan, 1998; Poythress et al., 1999; Roesch, Zapf, Eaves, & Webster, 1998; Rogers, Tillbrook, & Sewell, 2004; as cited in Pirelli, Gottdiener, & Zapf 2011)

Despite the development of competency assessment instruments, many clinicians still utilize more traditional psychologic tests to determine a defendant's competency (Archer, Buffington-Vollum, Stredny, & Handel, 2006; Borum & Grisso, 1995; Nicholson & Norwood, 2000; Ryba, Cooper, & Zapf, 2003; Skeem & Golding, 1998). According to Pirelli, Gottdiener, and Zapf (2011), the three most common of these tools that clinicians continue to utilize in determining competency include The Minnesota Multiphasic Personality Inventory (MMPI/ MMPI-2); The Wechsler Adult Intelligence Scales (WASI, WAIS, WAIS-R, WAIS-III); and The Brief Psychiatric Rating Scale (BPRS).

Second, AAPL guidelines suggest that clinicians look at a defendant's background, including such contextual information as criminal history, sex, age, race, educational level, socioeconomic status, employment history, marital status, prior psychiatric hospitalization, DSM diagnosis(es), intelligence, family criminality, and current criminal charges (Mossman et al, 2007; Pirelli et al., 2011; Schug & Fradella, 2014). The clinician can receive much of this information from collateral documents such as previous court cases and hospital records (Mossman et al., 2007a).

Characteristics of Incompetent Defendants. IST defendant characteristics have been a heavily researched area since the *Dusky* ruling in 1960 (e.g.,Nicholson & Kulgers 1991; Pirelli et al., 2011). Pirelli, Gottdiener, and Zapf (2011) argue that this significant amount of research is due to the frequency of competency evaluations (Bonnie & Grisso, 200?), the monetary cost of such assessments (Winick, 1985), and the concern of impeding the due process of pre-trial defendants (*Dusky v. United States*, 1960; *Medina v.*

California, 1992). Due to these issues, it is important that clinicians be able to determine the pre-trial defendant's competency accurately. Since the 1960,s two meta-analyses (Nicholson & Kulger, 1991; Pirelli, Gottdiener, & Zapf, 2011) synthesized approximately 100 articles to give guidance to clinicians evaluating potential IST defendants. Pirelli and colleagues (2011) conducted a meta-analysis that looked at 68 competency studies between 1967 and 2008 and found different demographic, clinical, and criminal characteristics between IST and competent defendants. 20 years' prior, Nicholson and Kulger (1991) did a similar meta-analysis of 30 studies between 1960 and 1990.

Demographic Characteristics. Both meta-analyses found similar characteristics in demographics. First, Pirelli and colleagues (2011) found that non-White individuals were 1.5 times more likely to be found IST. Similarly, Nicolson and Kulger (1991) found that non-White defendants are more likely to be found IST than White defendants. Cooper and Zapf (2003) suggested that this issue of overrepresentation of minority groups could be explained in two ways. First, African Americans and other members of racial or ethnic minority groups are overrepresented in the criminal justice system (U.S Department of Justice, 2014). Second, research suggests that African Americans are more likely to be diagnosed with a psychotic disorder than Whites (Adebimpe, 1994, as cited in Cooper & Zapf, 2003; see also Robins & Reiger, 1991). For example, one study found that African Americans have 15 times higher incidences of schizophrenia than Whites (Adebimpe, 1994).

Both meta-analyses found that gender had little impact on competency determinations (Nicholson & Kulger, 1991; Pirelli et al., 2011). Males are more

frequently evaluated, but the incompetence ratio between the two sexes are essentially equal (Pirelli et al., 2011). It is worth noting that four studies conducted in Canada found that female defendants were twice as likely to be deemed IST compared to males (see Pirelli, Gottdiener, & Zapf, 2011). In contrast, 14 studies conducted in the United States found that there were little differences between genders (see Pirelli, Gottdiener, & Zapf, 2011).

Pirelli and colleagues (2011) found unemployed defendants are twice as likely to be found IST compared to employed defendants. This finding contradicts Nicholson and Kulger's (1991) meta-analysis which found employment was uncorrelated with competency status. More recent studies suggest that unemployment does have an impact on a defendant being deemed IST (Cooper & Zapf, 2003; Hubbard Zapf, & Ronan 2003; Kois, Pearson, Chauhan, Goni, & Saraydarian, 2013; Schibier 2015).

Finally, marital status seems to impact competency determinations. Pirelli et al. (2011) suggest single defendants are 1.5 times as likely to be found IST as their married counterparts. Nicholson and Kulger (2011) also found that unmarried defendants were more likely to be found incompetent. This finding may be a function of incompetent individuals having a more severe mental illnesses or intellectual disabilities, making relationships difficult to sustain. Alternatively, it may be that married defendants have a family support network that help them cope better with their mental health challenges than their unmarried counterparts.

Clinical Characteristics. Clinical characteristics also play a significant role in determining the likelihood of a pre-trial defendant being deemed competent or IST.

Perilli and colleagues (2011) found that persons with psychotic disorders are eight times more likely to be found IST than those without a psychotic disorder. These findings mirror Nicholson and Kulger's (1991) meta-analysis, to some degree, which concluded that one of two pre-trial defendants experiencing psychotic symptoms are IST. Specifically, they included particular symptomology of psychotic disorders that may influence a competency determination. Some of these symptoms are "disorientation, delusions, hallucinations, impaired memory, and disturbed behavior" (Nicholson & Kulger, 1991, p. 360). Hart and Hare (1992) found that the psychotic disorder schizophrenia specifically a reliable indicator of incompetence (as cited in, Thomas 2010).

Also, a diagnosis of intellectual disability/developmentally delay (ID/DD) has a clinical correlation with incompetency. ID/DD defendants many times lack traits such as deficiencies in communication, attention, moral development, and motivation (Anderson & Hewitt, 2002). One study showed that individuals who tested bellow an IQ of 60 were all deemed IST (Perilli 1986; as cited in Thomas 2010). Despite these complications, research has shown that ID/DD defendants are ordered to receive a competency evaluation less frequently than those with psychotic disorders or substance abuse disorders (Prelli, Gotdiener, and Zapf, 2011; Anderson & Hewitt, 2002, Martell, 1992; Perilli et al., 2011). Cooper and Grisso (1997) suggest this is due to ID defendants being compliant, cooperative, and pretending to understand criminal proceedings (as cited in Kalbeitzer & Benedetti, 2008). Such behaviors stands in contrast to defendants with

psychotic disorders who may display symptoms such as odd behavior, delusions, and hallucinations (Kalbeitzer & Benedetti, 2008).

Other disorders—such as mood disorders, personality disorders, and substance use disorders—may contribute competency determinations (Nicholson & Kulger, 1991, Pirelli et al., 2011). Defendants with the primary diagnosis of substance use disorder made up 17.8% of IST defendants (Pirelli et al., 2011). Weinborn and colleagues (2003) found that co-occurring substance abuse and mental illness made up 72% of incompetent defendants.

Finally, clinical history is a significant characteristic in predicting a defendant's competency. Pirelli, Gotdiener, and Zapf (2011) found that individuals who have a history of psychiatric hospitalization were twice as likely to be deemed IST. Defendants who are have been prescribed psychotropic medications in the past are also more prone to be considered IST (Cooper & Zapf, 2003). Pirelli et. al (2011) found, after reviewing five studies, defendants who received competency evaluations in the past were no more likely to be deemed IST or competent than those who never received a determination. However, some studies such as, Rosenfield and Wall's (1998), found that defendants who had previous evaluations were more likely to be deemed incompetent.

Legal Characteristics. Cooper and Zapf (2003) found that the IST defendants were less likely to have violent offenses and be charged with misdemeanor offenses. Also, Pirelli et. al (2011) reported that individuals who are deemed competent were more likely to have violent crimes. However, Nicholas and Kugler's (1991) meta-analysis found that there was no difference between nonviolent and violent crimes incompetency

evaluation outcomes. Schrieber and colleagues (2015) found that those IST defendants who were charged with violent crimes had a median of 13 interactions with the criminal justice system. The researchers also discovered that violent defendants were more likely to harm strangers and correctional officers than family members. One in five of these defendants were found to have used a weapon. Other research has found that persons with misdemeanor charges, compared to those with a felony charge, were more likely to be found IST (Rosenfield & Ritchie 1998, as cited in Kois et al., 2013). However, some studies have shown that the level of charge is not correlated with IST determinations (Cochrane, Grisso, & Frederick, 2001).

Restoration to Competency

Relative to IST research, there is little research done on the concepts surrounding restoration (Zapf & Roesch, 2011). There are three major areas of focus in this field of the investigation: 1) The IST defendants' characteristics that impact an evaluators opinions and predictions of restorability at the initial IST evaluation and before restoration outcomes, 2) the actual demographic, clinical, and legal characteristics of restored and IST/NR defendants and 3) is the effectiveness of RTC programs (Zapf & Roesch, 2011).

Restoration to Competency Programs. RTC programs are developed around the diagnoses that are most likely to result in a finding of incompetency, including psychotic disorders and cognitive impairments that impact one or more competency-related components (Zapf & Roesch, 2011). The most common method of regaining competency is the utilization of psychiatric medication (Zapf & Roesch, 2011). However,

some issues arise when defendants refuse medication. *Sell v. Untied States* was a 2003 Supreme Court decision that attempted to solve the matter by allowing RTC programs to administer anti-psychotic medications forcibly, but only in limited circumstances (Zapf & Roesch, 2011).

Some jurisdictions attempt to restore competency with psycholegal education programs. However, Zapf and Roesch (2011) found that these programs have minor benefits to the IST defendant, suggesting that focusing on medication compliance may be the best method of treatment. For example, Anderson and Hewitt (2002) looked at an RTC program that focused on restoring competency of defendants with ID/DD. The program they evaluated consisted of training and role plays that taught defendants about the legal system, legal charges, and consequences of criminal acts. After the author's evaluation, they found that the program had only an 18% success rate. These results led Anderson and Hewitt (2002) to state "for the most part, competency training for defendants with [intellectual disabilities] might not be that effective'' (p. 349).

Bertman and colleagues (2003) looked at the three RTC programs and compared their effectiveness in restoring competence. The three programs were: standard hospital treatment, legal rights education, and competency-related remediation. The authors found that persons who received standard hospital care in conjunction with the other two programs improved restoration rates. However, they were unable to decipher if this was the result of the programs or if it was the increased number of sessions and increased attention the IST defendants received.

Restoration Predictions. Due to the *Jackson* ruling in 1972, mental health professionals have been tasked to "determine whether there is a substantial probability that he (defendants) will attain competency in the foreseeable future" (p. 362 ???). This means that behavioral health professionals are required by law to make predictions about restoration outcomes. This concept has been challenging task for behavioral health professionals; research has shown varying results. Roesch and Golding (1980) made the assertion that it would be impossible for clinicians to make an accurate restoration prediction due to the low base rate of IST/NR. Later research has confirmed this assertion that predictions are difficult to make (Carbonell, Heilbrun, & Friedman, 1992; Hubbard, Zapf, & Ronan, 2003; Nicholson & McNulty, 1992).

For example, Carbonell et al. (1992) examined restoration predictions of 152 IST defendants over a three-year period. They found that clinical and demographic characteristics had no correlation in how a mental health professional predicted restorability. The clinician was only correct in predicting the restorability of an IST defendant 59.5% of the time. A more recent study by Hubbard, Zapf and Ronan (2003) examined 468 competency evaluation reports completed by clinicians at the Alabama State Hospital before restoration adjudication. The researchers were unable to find significant differences in most clinical, legal, and demographic characteristics amongst restorable and nonrestorable defendants due to the low-base rate of IST/NRs. The only correlation they found was that older defendants are predicted nonrestorable more often than younger defendants. The researchers also noted that clinicians only gave 42% of the

defendant's definitive predictions. Suggesting that mental health examiners may not have confidence in their ability to predict restorability.

Despite unsuccessful outcomes of the previous studies, more recent studies found correlations in clinician predictions in IST defendants' demographic, clinical, and legal characteristics. Hubbard and Zapf (2003) looked at 58 pretrial defendants and found that clinicians were likely to predict someone restorable if they have committed a violent crime or have had previous criminal activity. Also, they conducted qualitative research by interviewing two clinicians to explain these outcomes. They found that these clinicians made nonrestorable predictions due to older age and impairment in the person's ability to understand the legal process. In contrast, defendants were predicted to be restorable if they had a less severe mental illness and a more serious violent crime.

Restorable and Nonrestorable Characteristics. There are even fewer studies that look at the actual characteristics of restorable and nonrestorable defendants during treatment to confirm predictions (Thomas, 2010). Restoration of defendants is a relatively common occurrence. Mossman (2007) found 75% of defendants are restored within a year (as cited in Warren et al., 2013). Morris and Parker (2008) reported a restoration rate of 84% after evaluating records of 1,380 defendants in an Indiana state hospital (as cited in Warren et al., 2013). Zapf and Rosech (2011) found an average of 75 % of defendants are restored in six months after evaluating previous research.

Most notably, Mossman (2007) had success in determining clinical, legal and demographic characteristics of restored and IST/NR defendants. In his study, he looked at the archival data from Ohio's state psychiatric hospital between the years 1995 and 1999.

Most defendants belonging to Ohio's RTC program received antipsychotic medication and psycholegal education. The author found that IST/NR defendants were associated with seven variables which are:

1. misdemeanor charges
2. age at admission ($M = 40.1$)
3. intellectual disability (44%)
4. schizophrenia or schizoaffective disorder (78%)
5. number of previous hospitalizations (6)
6. length of stay in the hospital (> 10 years)
7. non-African-American ethnicity ($p = .014$), and
8. having a substance use disorder ($p = .0033$).

That said, the Mossman (2007) concluded that two types of defendants seem to be nonrestorable. First, an IST defendant has a low probability of restoration if they have a "longstanding psychotic disorder" that has resulted in long stays in psychiatric hospitals (p. 41). Second, if an IST defendant has an "irremediable cognitive disorder" and has an inability to comprehend the information in a competency evaluation, they have well-below-average chance of being restored (p. 41).

Colwell and Gianesini (2011) found similar findings to Mossman's observations. The authors looked at 71 male defendants in an RTC programs in Connecticut. Out of the 71 defendants, 17 (24.3%) of them were determined to be nonrestorable. IST/NR defendants were more likely to have more prior incarcerations, more prior

hospitalizations, more medications prescribed, lower IQs, and an increased likelihood of having a borderline intellectual function, mental deficiency or psychosis.

Morris and Parker (2008) also found differing characteristics between 1,475 IST defendants admitted into an RTC program in Indiana between the years 1988 and 2005. They found that IST defendants with mood disorders were much more likely to be restored to competency, compared to those diagnosed with a psychotic disorder. Defendants with ID/DD were the least likely individuals to be restored.

IST/NR RTC program dispositions. According to *Jackson v. Indiana* (1972), after IST/NR defendants are released from an RTC program, their charges should be dismissed and civil commitment proceedings need to begin if their mental illness causes them to pose a danger to themselves or to others (see *Addington v. Texas*, 1979; *O'Connor v. Donaldson*, 1975; *United States v. Comstock*, 2010). However, there has only been one study (Levitt et al., 2010, to this date that examines the release of these IST/NR defendants.

Levitt and colleagues (2010) observed 293 IST/NR defendants residing in Maricopa County, Arizona, who were remanded for civil commitment proceedings. They compared the admission rates, length of stays in civil commitment, and court order evaluation (COE) standards for defendants deemed IST/NR to those who were otherwise civilly committed. Levitt and colleagues (2010) found IST/NR defendants had more lenient admission standards for civil commitment than those referred by friends, family, medical professionals, or other members of the public (i.e., noncriminal justice system actors). Admissions of IST/NR defendants did not meet civil commitment standards 50

percent of the time and COEs were only accepted because it was requested by the county attorney's office. They also found that IST/NR defendant's length of stay in the hospital was twice as long as those who were committed from the general population. It came to no surprise to the researchers that those who had more severe crimes, such as murder and child molestation, had the longest periods of commitment.

Summary

There is a gap in our knowledge regarding IST/NR defendants. Some researchers have concluded that there are specific characteristics that predict whether a defendant will be adjudicated IST/NR (Colwell & Gianesini 2011; Morris & Parker, 2008; Mossman, 2007), while others were unable to establish predict criteria, perhaps due to low base rates of IST/NR defendants (Carbonell, Heilbrun, & Friedman, 1992; Hubbard, Zapf, & Ronan, 2003; Nicholson, Barnard, Robbins, & Hankins, 1994; Nicholson & McNulty, 1992). This knowledge gap is unfortunate due to the possible risk IST/NR defendants pose to the general public since they must be released from custody, but may not be civilly committed. This knowledge gap also limits the ability for policymakers to make informed decisions to develop policies and programs to handle individuals who are found IST/NR.

As of now, Arizona is attempting to pass legislation to decrease the number of IST/NR defendants from reoffending while still honoring these defendants' constitutional rights. However, legislators are not well-informed of the prevalence or the characteristics of these individuals. They also do not know the disposition or legal outcomes of IST/NR defendants being released from custody, though, they do suspect that the current practice

of civil commitment and guardianship is not an effective way of oversight. That said, it is therefore important to learn the characteristics of IST/NR defendants, how often they reoffend, the frequency of civil commitments, and the proportion a guardian is appointed for them.

This study aims to contribute more knowledge around IST/NR defendants and provide additional information on these individuals to Arizona legislators. The study will attempt to answer two research questions:

1. What are the demographic, legal, and clinical characteristics of IST/NR defendants in Arizona?

2. What are the civil commitment, guardianship, and re-offense rates of IST/NR defendants in Arizona?

CHAPTER 3

Methodology

Overview

This study utilized a comparative descriptive analysis of secondary data collected on restored and IST/NR defendants by the Pinal County, Arizona. The study compared clinical, legal, and demographic characteristics between IST/NR and restored defendants. Also, it observed IST/NR defendants' rates of civil commitment, guardianship appointments, and re-offense rates. These variables will help in answering the two research questions proposed in the study.

1. What are the demographic, legal, and clinical characteristics of IST/NR defendants in Arizona?
2. What are the civil commitment, guardianship, and re-offense rates of IST/NR defendants in Arizona?

Research question one will contribute to the growing knowledge of IST/NR defendant characteristics and add more clarity to the topic. Research question 2 will reduce the gap of knowledge regarding civil commitment, guardianship, and re-offense rates.

Participants

The participants of the study included a sample of 99 defendants from the Pinal County RTC programs between the State Fiscal Years 2011 and 2016. All participants excluding one were charged with felonies. The demographics of the participants are listed in table 1.

Table 1. *Demographics of Participants*

Gender[1]	*n*	%
Male	82	83.7
Female	16	16.32
Age	Range	*M*
	18 -82	38
Race/ Ethnicity[2]	*n*	%
White	37	37.1
African American	12	12.4
Asian/ Pacific Islander	0	0
American Indian/ Alaskan Natives	6	6.1
Hispanic/Latino	42	41.9

Procedures

Data collection. An Excel workbook data shell (Appendix A) was created by Arizona State University (ASU) staff in conjunction with an Arizona State Legislative Subcommittee and distributed to Pinal County Attorney's Office in October 2016. Contacts in Pinal County were requested to fill in the data shell with the appropriate information. Attached to the Excel workbook were specific instructions to contact ASU staff via email to set up a phone conference to answer any questions or to report any barriers in collecting specific data points. In addition to the ASU instructions, a request from the Arizona State Legislative Subcommittee was included to encourage participation.

Measures and variables. The data shell contained six domains of individual defendant level data that addressed originating crime, defendant restoration outcomes,

[1] One defendant had missing information regarding gender.
[2] Two defendants had missing information regarding race/ethnicity

new charging crimes, demographics, IST/NR civil commitment results, and guardianship appointment. Most of the data collected in the study was categorical but some variables were continuous such as age. Appendix B explains the variable name, its description, and data type used in the Excel worksheet.

Data Analysis

For research question one, descriptive statistics and chi-squares were used to compare demographic, legal, and clinical characteristics of IST/NR and restored defendants. Also, a linear regression analysis was used to show relationship between age and restoration determination. There were six defendants who re-entered the RTC program due to re-offense or re-admission. In each of these cases duplicate information (i.e. race, gender, age) was removed.

For research question two, descriptive analysis of disposition variables was used to summarize data. Descriptive statistics include, frequencies, central tendencies, and standard deviation. In several cases chi-square assumptions were violated due to low frequencies of variables; in these instances, variables were merged according to the following criteria:

Race was sorted into two categories non-minority and minority defendants. In addition, the defendants with a Hispanic/Latino ethnicity were included in the minority category. Charging crimes were sorted into four categories and eight subcategories that were derived from the FBI Uniform Crime Reporting (2016) procedure. Charging crimes were rank ordered by their severity as followed: crimes against persons (subcategories: criminal homicide, rape, robbery, and aggravated assault); crimes against property

(subcategories: burglary, motor vehicle theft, and arson); drug offenses, and "other" offenses (probation violations, disorderly conduct, etc.) If a defendant was charged with multiple crimes, the most severe crime was coded in accordance with the FBI's *Uniform Crime Reporting Handbook* (2004) "hierarchy rule" for reporting crime data. For example, if the defendant were accused of aggravated assault and drug possession, then charging crime would be coded as a crime against a person. In the few cases defendants were re-admitted, the more severe of there two charging crimes were chosen for the analysis. In addition, once the charging crimes were coded into these categories, depending on the analysis, they were grouped into two categories as followed: crimes against persons or "other" crimes (crimes against property, drug offense, and other offenses).

CHAPTER 4

Results

Research Question 1: What are the demographic, legal, and clinical characteristics of IST/NR defendants in Arizona?

Non-Restorability. Nighty-two defendants had restoration determinations within SFY 2011-2016. Of these, 60 (62.9%) defendants were restored to competency, 32 (30.5%) were deemed non-restorable, 7 (7.1%) participants were missing restoration determinations due to them having an ongoing or pending status. Excluding the ongoing or pending determinations, the restorability rate was 65.2%.

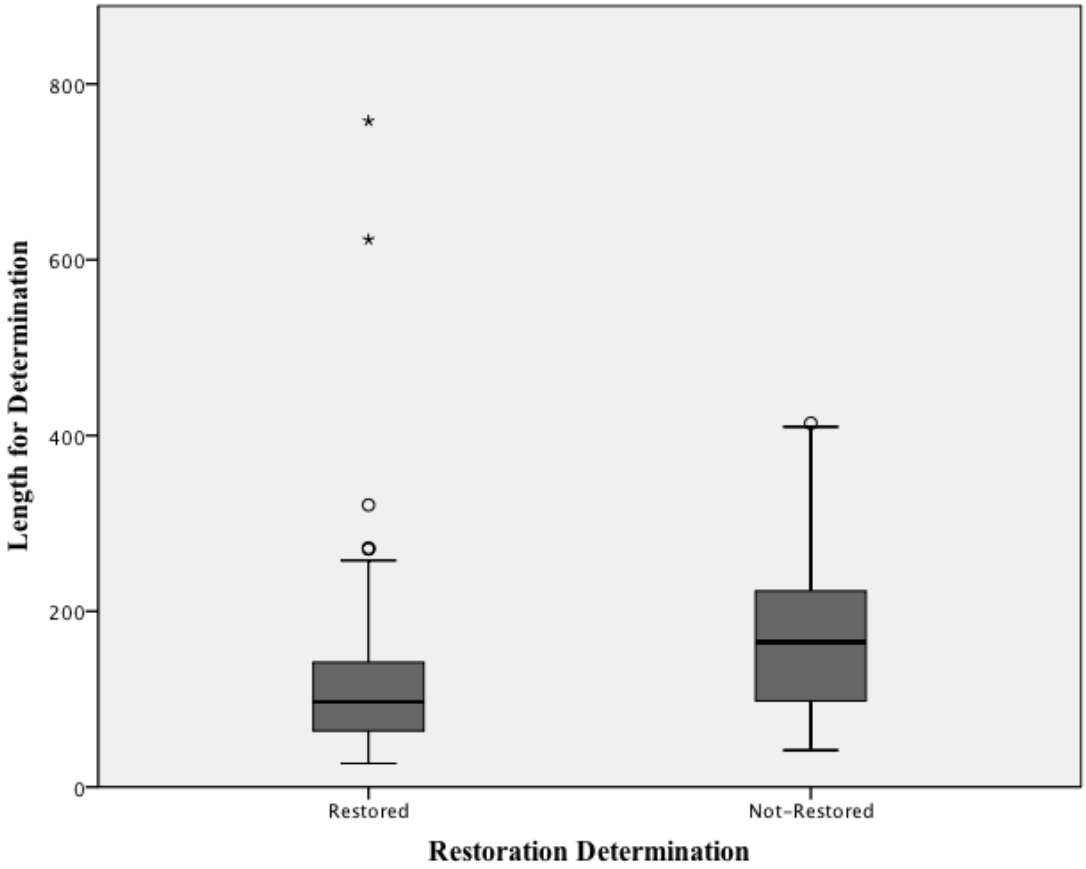
Table 2
Restoration Determination Outcomes

		Frequency	%	Valid Percent
Valid	Restored	60	60.6	65.2
	Not-Restored	32	32.3	34.8
	Total	92	92.9	100
Missing	Ongoing	3	3	
	Pending	4	4	
	Total	7	7.1	
Total		99	100	

Length of Restoration Determination. There were 95 (90.47%) cases, six of which were re-admissions, that had information concerning the length of restoration determination, and in 10 (9.53%) cases there was missing information. The overall length of determination ranged from a minimum of 27 days to a maximum of 758 days, with a average 147.93 days and a standard deviation of 117.401. For 65 cases in which defendants were restored to competency, the average length of determination ranged

between 27 to 758 days and averaged 132.85 days. Comparatively, for 30 cases in which defendants were found IST/NR, the length of determination ranged from 42 to 414 days and averaged at 180.60 days. Most restoration decisions were made within 5 months (62.9%). Figure one shows the length of determination for each restoration category in a box plot.

Figure 1
Length of Determination Box Plot



Gender. Nighty-eight (99.0%)[3] defendants had information regarding gender and 1 (1.0%) defendant had missing information. There was 82 (82.8%) male defendants and

[3] Seven of the defendants had pending or ongoing restoration determinations.

16 (16.2%) female in the study. Restored defendants were comprised of 51 (85.0%) males and 9 (15.0%) females. Correspondingly, IST/NR defendants had a total of 24 (77.4%) males and 7 (22.6%) females. A chi-square test was performed and no relationship was found between gender and restoration determination ($X^2_{(2,\ 91)} = .811$, p =.368).[4]

Table 3
Restoration Determination & Gender Crosstabulation

			Defendant Gender		
			Male	Female	Total
Restoration Determination	Restored	Count	51	9	60
		%	85.0%	15.0%	100.0%
	Not-Restored	Count	24	7	31
		%	77.4%	22.6%	100.0%
Total		Count	75	16	91
		%	82.4%	17.6%	100.0%

Race/ethnicity. The study was comprised of 6 (6.1%) American Indian/ Alaskan Natives, 12 (12.4%) African Americans, 37 (37.1%) Whites, 42 (41.9%) Hispanics, 0 (0%) Asians and Pacific Islanders, and 2 (1%) defendants whose race/ethnicity was missing. To ensure compliance with the assumptions of a chi-square test, race/ethnicity was re-categorized into minority and non-minority groups. IST/NR defendants had 12 (38.7%) non-minorities and 19 (61.3%) minorities. Restored defendants had 22 (36.4%)

[4] Eight (7.6%) defendants were not included in the chi-square analysis due to missing data or because they had pending or ongoing restoration determinations.

non-minorities and 38 (63.6%) minorities. Restoration determination was not found to be associated with defendant minority status ($X^2_{(2, 91)} = .036$, $p = .849$)[5].

Table 4
Restoration Determination & Minority Crosstabulation

			Minority		
			No	Yes	Total
Restoration Determination	Restored	Count	22	38	60
		%	36.7%	63.3%	100.0%
	Not-Restored	Count	12	19	31
		%	38.7%	61.3%	100.0%
Total		Count	34	57	91
		%	37.4%	62.6%	100.0%

Age. The age of 97 (98%) defendants ranged between 18 and 82 with a mean age of 38.73 and a standard deviation of 13.160. Two (2%) of defendants had missing information regarding their age. A simple linear regression was calculated to predict restoration determination based on age. An insignificant regression equation was found, ($F(1,19.9) = .434$, $p < .512$, with an R^2 of -.006[6] .

Charging crime. Forty-six (50%) defendants in the study were charged with crimes against persons, 12 (13%) defendants were accused of property crimes, 16 (16.4%) defendants were charged with drug crimes, and 18 (19.6%) defendants were accused of other crimes. 20 (62.5%) IST/NR defendants were charged with crimes against persons, 5 (15.6%) against property, 5 (15.6%) drug-related crimes, and 2 (6.3%)

[5] Eight (7.6%) defendants were not included in the chi-square analysis due to missing data or because they had pending or ongoing restoration determinations.

[6] Seven (7.0%) defendants were not included in the regression analysis due to missing data or because they had pending or ongoing restoration determinations.

"other" crimes. Comparatively, 26 (43.3%) restored defendants were charged with crimes against persons, 7 (11.7%) against property, 11 (18.3%) drug-related offenses and 16 (26.7%) "other" crimes. Charging crimes were collapsed into two categories, crimes against persons and "other" crimes for statistical purposes. A chi-square test found very little relationship between charging crimes and restoration determination, ($X^2_{(2, 92)} = 3.067$, $p = .08$)[7].

Table 5 shows the differences between the charging crime category for restored and IST/NR defendants.

Table 5
Restoration Determination & Crime Category Crosstabulation

			CrimeCategory3		
			Crimes Against Persons	Other Crimes	Total
Restoration Determination	Restored	Count	26	34	60
		%	43.3%	56.7%	100.0%
	Not-Restored	Count	20	12	32
		%	62.5%	37.5%	100.0%
Total		Count	46	46	92
		%	50.0%	50.0%	100.0%

Basis of non-restorability. Twenty-five (78.1%) defendants had a mental illness as the reason for their non-restorability, followed by 5 (15.6%) defendants with ID/DD, 1 (3.1%) defendant with substance abuse/addiction and 1(3.1%) with "other".

[7] Seven (7.0%) defendants were not included in the chi-square analysis due to missing data or because they had pending or ongoing restoration determinations.

Unfortunately, no diagnosis data was collected on restored defendants. This is a limitation of the study because there is no comparison group for IST/NR defendants.

Table 6
Basis for Determination of Nonrestoarblity

		Frequency	Percent	Valid Percent
Valid	Mental Illness	25	78.1	78.1
	Intellectual/Developmental Disability	5	15.6	15.6
	Substance Abuse/Addiction	1	3.1	3.1
	Other	1	3.1	3.1
	Total	32	100.0	100.0

Research Question 2: What are the civil commitment, guardianship, and re-offense rates of IST/NR defendants in Arizona?

Title 36 Appointment. Nineteen (59.4%) IST/NR defendants were remanded to a court ordered evaluation (COE), 11 (34.4%) IST/NR defendants were not remanded for COE, and 2 (6.3%) IST/NR Defendants had missing information. All IST/NR defendants who were remanded for COE received a persistently and acutely disabled (PAD) evaluation. Eighteen (94.7%) defendants had a mental illness, and 1 (5/3%) had ID/DD diagnosis. None received a COE for danger to others (DTO), danger to self (DTS), or gravely disabled (GD). A Fisher's Exact Test was performed and found little association between charging crimes and COE (p = .078).

Those who were remanded for COE, 12 (80%) received both inpatient and outpatient court order treatment (COT), 5 (20%) did not receive ongoing COT and 2 were missing data due to pending status. Table 7 shows the frequencies of COT cross-tabulated

with charging crimes and table 8 shows the frequencies of COT cross-tabulated with a basis of non-restorability.

Table 7
Title 36 Commitment & Basis for Determination of Non-restorability

			Basis for Determination of NonRestorability			
			Mental Illness	Intellectual/Developmental Disability	Other	Total
Title 36 Commitment	Yes	Count	18	1	0	19
		%	94.7%	5.3%	0.0%	100.0%
	No	Count	6	4	1	11
		%	54.5%	36.4%	9.1%	100.0%
Total		Count	24	5	1	30
		%	80.0%	16.7%	3.3%	100.0%

Table 8
Remanded for Title 36 Commitment & Crime Category

			Crime Category		
			Crimes Against Persons	Other Crimes	Total
Remanded for Title 36 Commitment	Yes	Count	15	4	19
		%	78.9%	21.1%	100.0%
	No	Count	5	6	11
		%	45.5%	54.5%	100.0%
Total		Count	20	10	30
		%	66.7%	33.3%	100.0%

Guardianship. Twenty-one (65.6%) IST/NR Defendants did not receive a guardian, four (12.5%) received guardianship, three (9.4%) already had a guardian prior entering the RTC program and four (12.5%) had missing this information. Of those who received a guardian, three had a ID/DD diagnosis, one had an "other" diagnosis, and none

had a mental illness. All IST/NR defendants had family members appointed as guardian. For the three defendants who had a guardian prior to entering the RTC program, two were relatives and one was a public fiduciary. All of these individuals had a mental illness as the basis for non-restorability.

Re-offense. Three defendants (3.03%) were charged with a new crime and were re-admitted to the RTC program between SFY 2012 and 2016. One defendant was charged with a crime against persons and found restorable in both offenses. One defendant was found IST/NR at the original offense and restorable at the second offense. The original offense was aggravated domestic violence, and the second offense was criminal trespassing. Finally, one defendant was found restorable at the original offense and non-restorable at the second offense. For this defendant, both offenses involved crimes against persons.

CHAPTER 5

Discussion

Overview

This study aimed to answer two research questions in order to decrease the gap of knowledge concerning the IST/NR population and to inform policy. The two research questions were as followed:

1. What are the demographic, legal, and clinical characteristics of IST/NR defendants in Arizona?
2. What are the civil commitment, guardianship, and re-offense rates of IST/NR defendants in Arizona?

The study observed secondary data of 99 defendants in the Pinal County RTC program between the SFY 2011- 2016. Results suggested no statistical differences in legal and demographic characteristics between restored and IST/NR defendants. The most salient results indicated a low frequency of re-offense rates, low utilization of guardianship, and a lack of variety in court order evaluation designations. However, the study was limited due to the low powered statistical analyses and its generalizability.

Comparisons to Other Studies

Research question one. Research question one found varying similarities and differences in demographic, clinical, and criminal characteristics when compared to other studies. The present study found the restoration rate was 67% and the majority of determinations were made within five months of admission. The demographic profile of most defendants was male, minority, and an average age of 39. Criminal characteristics

show that defendants in the RTC program typically committed felony crimes against persons. Lastly, Mental illness was the primary reason for for non-restorability.

In consideration of the aforementioned, this study was unable to find any characteristics that differentiated restored and IST/NR defendants. This finding conflicts with Mossman (2007) and Colwell and Gianesini (2001) which found specific characteristics associated with IST/NR defendants. The present study may have experienced less successful results due to the small sample size and variables observed. Also, it should be noted that the statistical analyses were limited to predominantly chi-squares whereas Mossman (2007) utilized more powerful regression analyses. Nonetheless, the lack of difference between restored and IST/NR defendants may suggest that demographics and criminal characteristics observed are not factors in competency decisions in Pinal County.

While this study was unable to find demographic differences between restored and IST/NR defendants, it did find a possible over representation of Hispanics in the Pinal county RTC program. In the present study the majority of the defendants were minorities (61.9%) and specifically Hispanic (41.9%). In comparison, Pinal County population is 29.3% Hispanic, which is analogous to the Hispanic inmate population of Arizona of 30% (Arizona Department of Corrections, 2016). The study findings show Hispanics may be referred to RTC programs more frequently than the incarcerated and general population. The higher rate of Hispanic defendants entering the RTC program may be because Hispanics are known to have limited access to behavioral health care compared to Whites, and when they do, they are more likely to receive poorer care

(Institute of Medicine, 2003; United States Department of Health and Human Services, 2001).

Consistent with other research (Colwell & Gianesini, 2011; Mossman, 2007), mental illness was the primary reason for a defendant to be found non-restored, followed by ID/DD. Unfortunately, due to time constraints, this study did not gather specific diagnosis or symptom information. Though this finding continues to demonstrate the need for RTC programs to design programs to meet the unique and differing needs of persons with mental illnesses and a ID/DD diagnosis.

Additionally, IST/NR defendants are just as likely to be convicted of violent crimes as their restored counterparts. However, the study was close to finding a significant association between IST/NR defendants and violent crimes ($p = .08$). As is this finding is in disagreement to other studies showing that IST/NR defendants are charged with less violent and misdemeanor charges (Mossman 2007). One possible reason for this difference is due to the sample only including individuals with felony charges. That is because Pinal County does not generally refer people with misdemeanor charges to their RTC program.

Finally, The Pinal County RTC program had a similar restoration rate of other studies. The restoration rate was 65% compared to the average restoration rate of 75% in other studies (Zapf & Roesh 2011). Similar to Morris and Parker (2006). the present study found that most defendants had a determination within five months of their stay in the RTC program.

Research question two. The present study successfully answered research question two regarding IST/NR dispositions after release from an RTC program. Civil commitment procedures were used most often amongst those who had charging crimes against persons and least often with "other" crimes. Within this study, all discharged IST/NR defendants received a persistently and acutely disabled (PAD) court order evaluation and most had a mental illness. IST/NR defendants on court ordered treatment received both inpatient and outpatient treatment. Compared to civil commitment, guardianship was only employed four times and mostly amongst those who had an ID/DD diagnosis. Finally, only two IST/NR defendant re-offended during the observed time of the study.

With respect of these results, civil commitment procedures seemed to vary from the research conducted by Levitt and colleagues (2010). This study found that persons who were remanded to court order evaluation were only given the PAD designation. Whereas, Levitt and colleagues (2010) in Maricopa County found individuals were remanded for being a danger to self, danger to others, PAD and gravely disabled (GD). Accordingly, Arizona Revised Statutes Title 36 states persons who are remanded for being a danger to self or a danger to others must be an imminent risk (usually described as within 72 hours) of such behaviors. Since the defendants were in custody at an RTC program, Pinal County believed they were not in imminent risk of being a danger to self or to others (D. Kalandaros, personal communication, March, 2017).

Another difference between the two counties is Pinal county never utilized the GD designation for its IST/NR population. In the state of Arizona someone meets the

PAD criteria if person with a mental illness "suffers mental, physical or emotional harm that significantly impairs judgment, reason, behavior or capacity to recognize reality" and does not have the capacity to make an informed decision regarding their care (ARIZ. REV. STAT. §§ 36-501–550). Someone who is remanded for a GD designation has a mental illness that renders them incapable of meeting their basic needs and as a result is likely to cause "serious physical harm or serious illness" (ARIZ. REV. STAT. §§ 36-501–550). Thus suggesting the RTC program in Pinal county does not believe persons IST/NR are incapable of meeting their basic needs. Alternatively, it could be that GD evaluations and treatment regimens are too expensive and time consuming to implement.

Ultimately, in both studies most IST/NR defendants received a court ordered treatment for being PAD. In this study 80% of the IST/NR defendants remanded for court ordered evaluation received court ordered treatment. Similarly, Levitt and colleagues (2010) had 84% of their participants receive court ordered treatment. It is not a surprise that there is a high of a rate of court order treatment due the PAD designation being a catchall standard for persons with a serious mental illness (Levitt and colleagues, 2010, see also ARIZ. REV. STAT. §§ 36-501–550).

Unexpectedly, guardianship was never utilized for people with a mental illness and was frequently used for individuals who have an ID/DD diagnosis. In the State of Arizona, persons who are deemed "incapacitated" can be appointed a guardian by the State. An incapacitated person is defined as:

> Any person who is impaired by reason of mental illness,
> mental deficiency, mental disorder, physical illness or

> disability, chronic use of drugs, chronic intoxication or other cause, except minority, to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person. (see ARIZ. REV. STAT. §§ 14-5301–5317).

Thus, it is plausible that persons who are deemed to be IST/NR with a mental illness are less likely to meet this criterion and therefore not referred for evaluation. Also it may be that mental health professionals view civil commitment a more appropriate way to receive ongoing services, than guardianship. There is limited research indicating when a behavioral health professional may recommend guardianship as opposed to civil commitment. Yet, Hartfield and colleagues (2001) found that persons who were referred to outpatient civil commitment are associated with being a risk to themselves and others and have an increased interaction with the criminal justice system. In comparison, the researchers found that persons who were referred to guardianship were associated with the severe symptoms impacting their daily living skills (Hartfield et al., 2001). While the study was conducted in England, it may provide limited insight to why guardianship was used as opposed to court order treatment. Lastly, persons with a ID/DD may have more natural supports than persons with a mental illness making it more difficult to find a willing person to accept guardianship.

Finally, IST/NR defendants rarely re-offended (6.25%) in the five-year period disclaiming the idea that IST/NR defendants are continually committing crimes and re-entering the RTC program. This is a significant finding because there is discussion in the

Arizona legislator on dangerous IST/NR defendants re-committing crimes and perpetuating a revolving door (Grado, 2015). As observed, IST/NR defendants have a lower re-offense rate than the general prison population (Bureau of Justice Statistics, 2014). Sixty-seven percent of all prisoners nation-wide will be rearrested with in 3 years of conviction (Bureau of Justice Statistics, 2014).

Two possibilities may give light to why there was such a low re-offense rate. First, it may be that outpatient and inpatient court order treatment is successful reducing subsequent criminal offending. Studies have shown outpatient civil commitment decreases the arrest rates of persons with mental illness (New York State Office of Mental Health, 2005; Swanson et al., 2000; as cited in Fradella & Smith-Casey, 20014) This may be because of increased oversight of a clinical team and continued forced medication treatment. Second, IST/NR defendants may not be as significant of a public threat as perceived by the legislators. Many of these charging crimes could have been "one off" experiences for the IST/NR defendants.

Limitations

There are a few limitations that need to be addressed in this study. First, due to time restraints on conducting this study, data on criminal history was limited to those who re-offended and were re-admitted into the same RTC program. Gaining a more in-depth criminal history would have provided more knowledge around the intersection of re-offense rates and restoration determinations.

Another limitation was the inadequate amount of clinical information gathered in the study. The study would have benefited from having more diagnostic information in

which to compare restored defendants to IST/NR defendants. Also, the study would have been enhanced if the exact diagnosis and symptoms of the clients were gathered. Defendant symptomology would have given more insight to the specific behaviors, cognitive processes, and mental states of IST/NR defendants.

Finally, the sample size was small and was limited to one geographic area. Due to the sample size, the power for the statistical analyses was weak, limiting its internal validity and increasing a chance of type two error. Expanding the sample size would have eliminated this limitation and may have shown a statistically significant association between observed variables. Also, Pinal County Arizona is a small rural county which makes up only 6% the of Arizona's population. Gathering individual level data from the more populated counties would have increased the likelihood of a representative sample therefore enhancing generalizability.

Strengths

In spite of the limitations of the study**,** there are several strengths to be addressed. The study contributed to the small amount of research that looks at adjudicated IST/NR defendants. By observing actual determinations, it gave a more concrete understanding of possible clinical, criminal, and demographic characteristics of IST/NR defendants. Next, it illuminated findings concerning RTC disposition outcomes. There has been no research on how often IST/NR defendants re-offend or re-enter RTC programs, no research on the utilization of guardianship and limited research on civil commitment practices. Finally, to the knowledge of the author of this study, there has not been a study done on IST/NR defendants in the Southwest United States. This factor is important due to demographic

compositions in the Southwest United states. For instance, the Southwest is made up with the largest population of Hispanics (U.S Census, 2010).

Implications for Policy and Further Research

Pinal County Policy. There are two policy recommendations that can be derived from this study for Pinal County. First, Pinal would benefit in utilizing their full range of legal options in remanding their IST/NR population for a COE. Pinal county should explore using the GD, danger to self and danger to others designation, not only the PAD designation. Extending these options may increase the number of defendants they can remand for evaluation, therefore increasing the likelihood that IST/NR defendants receiving treatment. Second, Pinal count may want to refer defendants with a mental illness to guardianship evaluations in order to increase treatment oversight and compliance. However, the cost of expanding COE practices, increasing public fiduciary case loads, and inadequate psychiatric bed availability may limit their ability to enacting these recommendations.

Arizona policy recommendations. There are a few practical implications for Arizona policymakers surrounding this study. Based on this sample of Pinal County defendants, it seems that re-offense and re-entry into the RTC program does not occur frequently. Therefore, before establishing a new statewide program for dangerous IST/NR defendants, there should be an additional investigation on re-offense rates in other counties and the effectiveness of COT and guardianship in preventing re-offense.

In addition, one possible preventative measure Arizona could adopt is to modify their civil commitment language from “imminent” to the “likelihood” of being a danger

to themselves or others. This could be similar to Wisconsin's "Fifth Standard" which allows individuals to be civilly committed before the person with a mental illness decompensates to the point they are in imminent risk of inflicting harm to themselves or others (Erickson, Vitacco, & Van Ryborek, 2005). Allowing for individuals to be civilly committed with limited regard to there dangerousness could decrease criminal justice interaction amongst those who are mentally ill (Fradella, & Smith-Casey, 2014). However, this surfaces issues surrounding civil liberties and the shortage of psychiatric hospital bed availability (Fradella, & Smith-Casey, 2014).

Further studies. Further studies should explore into more detail concerning re-offense, guardianship and court order treatment of IST/NR defendants. The possible focus of theses studies could be the prevalence of guardianship appointments and civil commitment for IST/NR defendants in other jurisdictions. As well as looking at how guardians and outpatient civil commitment are successfully preventing IST/NR defendants from re-offending. Observing the effectiveness of dispositions more closely may provide complementary information to lawmakers when making policy decisions regarding IST/NR defendants. In addition, researchers should include more in-depth analysis of judicial competency decisions and criminal history. Observing this association may give insight on predispositions of competency decisions for defendants with in-depth criminal histories. Finally, research surrounding IST/NR defendants would improve with a more comprehensive observation of specific psychiatric symptoms. This would hopefully allow for clinicians to improve their restoration determinations based off of supplementary research literature.

Conclusion

In conclusion, this study gives a foundational understanding to the characteristics and discharge dispositions of IST/NR defendants in Arizona. The prominent findings of low utilization of guardianship, low rate of re-offense and lack of variation in COE should guide policy decisions in Pinal county and Arizona. Future research should continue to focus on observing specific clinical and legal characteristics of the IST/NR population in order to guide restoration determinations and to increase treatment outcomes.

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APPENDIX A

INSTRUCTIONS AND DATA SHELLS

SENATOR NANCY BARTO
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DISTRICT 15

REP. SONNY BORRELLI
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DISTRICT 5

Jon R. Smith
Yuma County Attorney
Yuma County Justice Center
250 W. Second St. Suite G
Yuma, AZ 85364

Dear County Attorney Smith:

For several years the Legislature has considered legislation dealing with the problems associated with defendants found to be unrestorable to competency. House Bill 2701, passed in the Second Session of the 52nd Legislature, created the Study Committee on Incompetent, Nonrestorable and Dangerous Defendants (INDDs). The Committee is charged with researching and making recommendations regarding treatment and supervision of the INDD population.

Before those deliberations can begin, it is important that the Committee better understand the characteristics and demography of that population – such as their diagnoses and how many keep reappearing in the system vs. how many are new SMI.

The ASU Center for Applied Behavioral Health Policy through Dr. Michael Shafer and graduate research assistant Matthew Snyder will be gathering data to assist the Committee in its deliberations. We would appreciate it if your office could cooperate with them and provide information as requested in the attached data gathering instructions and questionnaire.

The deadline for the receipt of the information is October 28th, 2016. Dr. Shafer and Mr. Snyder will be consulting with your office to answer questions and to assist with the data gathering.

We would appreciate hearing from you by mid-October if you have any questions. We believe this data is vital to the development of appropriate policies and programs to address the INDDs population.

Thank you for your assistance!

Sincerely,

Senator Nancy Barto
Arizona State Senate, D-15
602-926-5766
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Representative Sonny Borrelli
Arizona State Representative, D-5
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ASU Center for Applied Behavioral Health Policy

ARIZONA STATE UNIVERSITY

Incompetent, Non-Restorable, Dangerous Defendant (INDD) Legislative Sub-Committee Data Request

The Arizona State University's Center for Applied Behavioral Health Policy has agreed to serve as the data compiler for the legislative sub-committee's investigation of Incompetent, Non-restorable, and Dangerous Defendants (INDD). Each county is requested to compile and to submit critical data elements on defendants that have been processed during the past five State Fiscal Years (SFY 2012 – SFY 2016, July 1 – June 30). ASU strongly recommends that each county provide individual, defendant level data on all defendants that were referred for a competency hearing during the five year study period (SFY 2012 – SFY 2016). Recognizing the resource requirement that compiling such data might impose, ASU has also developed alternative reporting mechanisms for counties to provide aggregate level data.

The ASU study team will be headed by Professor Michael S. Shafer, Ph.D., who will be assisted by graduate research intern, Matthew Snyder. Each county is requested to email both Dr. Shafer (michael.shafer@asu.edu) and Mr. Snyder (smmatthe@asu.edu) with the first and last name, email address, and telephone number, including area code, of the individual(s) that will be compiling and submitting the data to ASU. Those individuals will then receive a meeting request to establish a conference call to review the data collection expectations and an invitation to the secured ASU Dropbox account where the data are to be uploaded. The deadline for data submission is Friday, October 28th.
On the following pages are the requested data elements for individual level and aggregate level data.

INDD Aggregate Data Workbook

Worksheet (1)

	Restoration Admissions & Discharges		Restoration Outcome		NEW CHARGES By Restoration Outcome	
State Fiscal Year	# Defendants Admitted for Restoration to Competency	# Defendants Discharged from Restoration to Competency	# Defendants Restored	# Defendants Not Restored / Not Competent	# Defendants Restored that Had NEW Charges Filed	# Defendants Not Restored / Not Competent that Had NEW Charges Filed
2012						
2013						
2014						
2015						
2016						

Worksheet (2)

State Fiscal Year	TOTAL Defendants Not Restored/ Not Competent	Defendants Not Restored/ Not Competent Charges		Basis for Non Restorability				
		# Defendant with Charges Dismissed	# Defendants Not Restored/ Not Competent with Charges Not Dismissed	# Ment. Ret. / Dev. Dis.	# Mental Illness	# Traumatic Head Injury	# Sub. Abuse/ Alcohol	# Other
2012								
2013								
2014								
2015								
2016								

Worksheet (3)

State Fiscal Year	TOTAL Defendants Not Restored/ Not Competent	Title 36 Petitions						
		# TOTAL Defendants Not Restored that were Remanded for T36	# Defendants Remanded for COT that were placed on COT	# COTs Treated Inpatient only	# COTs Treated Outpatient only	# COTS Treated Both Inpatient & Outpatient	# COTs with Charges Refiled	# COTs with Charged NOT Refiled
2012								
2013								
2014								
2015								
2016								

Worksheet (4)

State Fiscal Year	TOTAL Defendants Not Restored/ Not Competent	Guardianships		Released from Custody	
		# Defendants not Restored that were Assigned Guardian	# Defendants not Restored NOT Assigned Guardian	# Defendants not Restored that Released From Custody	# Defendants not Restored that were NOT Released from Custody
2012					
2013					
2014					
2015					
2016					

INDD Individual Level Workbook

Variables	Format
Unique Identifier of Defendant	This number is unique for each defendant and should not change.
Basic Information	
Originating Court	Input the court that is handling defendant charges?
Originating Charging Crime(s)	Describe the charges at the time restoration to competency petition was filed. Separate with semicolons.
Restoration Information	
Date that Restoration of Competency Petition Filed	(MMDDYYYY)
Restoration Determination	(1=Competent; 2 = Not Competent /Non-Restorable)
Date of Restoration Determination Filed	(MMDDYYYY)
Charges	
Were charges refiled	(1=Yes; 2=No)
Date Charges Were Refiled	(MMDDYYYY)
Were New Charges Filed?	(1=Yes; 2=No)
Date New Charges Filed	(MMDDYYYY)
New Charges	Describe New Charges if any. Separate with semicolons
Demographic Information	
Defendant Gender	(01=Male; 02=Female; 03=Transgender; 04=Unknown/missing)
Defendant Date of Birth	(MMDDYYYY)
Defendant Residential Zip Code at the Time of Arrest	#####
Defendant Race	(For each, 1 = Yes; 2=No) American Indian/Alaska Native; Asian; Native Hawaiian/Other Pacific Islander; Black/African American; White; Other; Missing
Defendant Hispanic	(01 = Yes; 02 = No; 99=missing/un known)
Non-Restorable	
Basis for Determination of Non-Restorability	(01=Mental Illness; 02=Mental Retardation/Developmental Disability; 03=Substance Abuse/Addiction; 04=Traumatic Brain Injury; 05=Other; 99=missing/unknown)

Were Charges Dismissed	(1=Yes; 2=No)
Title 36	
Remanded For Title 36 Commitment	(1=Yes; 2=No)
Date Remanded For Title 36	(MMDDYYYY)
Title 36 Remand Order	(1= Court Ordered Treatment; 2=Court Ordered Evaluation; 3=No Court Order)
Title 36 Type	(DTS, DTO, PAD, GD)
Court Order Treatment	(1=Inpatient Treatment; 2=Outpatient; 3=Both Outpatient and Inpatient; 4=No Court Ordered Treatment)
Guardian	
Was a Guardian Assigned	(1=Yes; 2=No)
Type of Guardian Assigned	(1= Public Fiduciary, 2 = Relative, 3 = Other)
Guardian Assignment Date	(MMDDYYYY)
Released	
Was Defendant Released	(1=Yes; 2=No)
Date Defendant Released	(MMDDYYYY)

APPENDIX B

INDIVIDUAL LEVEL VARIABLES

Individual Level Variables		
Variable	**Description**	**Type**
Originating Charging Crimes	The originating charging crimes are the crimes that the crimes committed that lead to the IST/NR charge	Categorical
Gender	The gender of the defendant (Male, Female, Transgender, Unknown)	Categorical
Date of Birth	The age of the defendant.	Ratio
Race	The race of the defendant (American Indian/Alaskan Native, Asian, Native Hawaiian/ Other pacific Islander, African American, White, or Other)	Categorical
Ethnicity	The ethnicity of the defendant(Hispanic or Non-Hispanic)	Categorical
Guardianship Appointment	Guardianship assigned by the court on a emergency basis	Categorical
Guardianship Appointment Type	The type of guardianship appointed by the judge (Public Fiduciary, Relative, or Other)	Categorical
Basis for Determination of non-restorability	The clinical diagnosis that lead to the an IST/NR determination(Mental Illness; Intellectual Disablity/Developmental Disability; Substance Abuse/Addictions; Traumatic Brain Injury; other)	Categorical
Charges Dismissed	Were the originating crime charges dismissed after IST/NR determination	Categorical
Remanded for Title-36	Was the the IST/NR defendant remanded for a court order evaluation	Categorical
Type of Title-36 petition	This is the basis for the remand for Title-36 court order evaluation. (Persistently Acutely Disabled, Gravely Disabled, Danger to Self, Danger to Others)	Categorical

Date of RTC admission	The date the defendant was admitted to a RTC program	Ratio
Date of restoration determination	The date the defendant was discharged from a RTC program	Ratio
Date defendant was released from custody	The date a person was released from custody after the IST/NR determination	Ratio
Re-offense	Did the IST/NR defendant reoffend after being released from a RTC program.	Categorical
Class of Charging Crime	The class of the originating charging crime (Felony or Misdemeanor)	Categorical